IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

W.P(C).No. 35413 of 2007(N)

PETITIONER:

M/S.SYNTHITE INDUSTRIAL CHEMICALS LTD.,
AJAY VIHAR, M.G.ROAD, ERNAKULAM 682 016,
REPRESENTED BY ITS DIRECTOR, SRI.GEORGE PAUL.

BY ADV. SRI.C.T.JOSEPH
SRI.JOE POLLAYIL
SRI.ROSHIN IPE JOSEPH

RESPONDENTS:

1. **DISTRICT COLLECTOR, COLLECTORATE BUILDING, KAKKANAD, ERNAKULAM 682 030.**

2. **REVENUE DIVISIONAL OFFICER, FORT KOCHI-682001.**

3. **TAHSILDAR, KANAYANNUR TALUK, ERNAKULAM 682 011.**

BY GOVT. PLEADER, SRI.TEKCHAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P. (C) No. 35413 OF 2007 N

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Dated this the 30th November, 2007

J U D G M E N T

The prayer in this writ petition is to quash Exts. P7, P8 and P9 and to direct the 3rd respondent to pass fresh assessment order in respect of the 83 returns filed assessing the 83 different apartments separately under the provisions of the Kerala Building Tax Act.

2. Petitioner submits that a plot of land originally belonged to it and that it had obtained a building permit for the construction of a multi storeyed apartment complex. Eventually a company coming under the same group called Synthite Properties and Investments (Pvt.) Ltd., constructed the apartment complex with 83 units of which 82 have been sold to outsiders whose names have been given in this writ petition. It is submitted that one of the flats is retained by the petitioner in its name.

3. Petitioner submits that proceedings were initiated by the 3rd respondent treating the petitioner as the owner of the whole building for assessment under the Kerala Building Tax Act. Although the petitioner produced documents to prove that though

the land originally belonged to it the undivided interest therein was sold to 82 owners and that it was making use of the contributions of those owners that the building was constructed, that did not find favour with the 3rd respondent.

4. Finally Ext. P7 order was issued by the 3rd respondent assessing the whole unit as one and levying building tax on the petitioner. This was carried in appeal before the 2nd respondent who rejected the appeal by Ext. P8 and the revisional authority also turned down the revision by Ext. P9. Petitioner submits that they have remitted two instalments of the tax assessed.

5. The main contention that is raised is relying on the judgment of this Court in Bavasons Constructions (Pvt.) Ltd. v. State of Kerala {2007 (3) KLT 101} where this Court had occasion to deal with identical contentions raised by a builder and relief was granted setting aside the order of assessment and directing re-consideration by the assessing officer. In that case, the assessing officer was directed to conduct a fresh enquiry with opportunity to the builder to adduce evidence.

6. On facts, I am satisfied that this case is similar to the one considered by this Court in the judgment referred to above and

the petitioner is also entitled to similar reliefs. Accordingly, I quash Exts. P7, P8 and P9 and direct that the 3rd respondent shall conduct a fresh enquiry into the liability of the petitioner for building tax. It will be open to the petitioner to adduce evidence to show that the undivided interest has been sold to 82 other owners of the apartments and that it is making use of the contribution made by those individual apartment owners the building in question has been constructed. It will also be open to the petitioner to make use of the evidence of the individual apartment owners.

7. The enquiry as directed above shall be completed by the 3rd respondent with notice to the petitioner as expeditiously as possible, at any rate within 3 months of receipt of a copy of this judgment. The question of refund or otherwise of the remittance made by the petitioner will depend upon the orders to be passed by the 3rd respondent.

Writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-